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Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Working Group on Indigenous Populations
Twelfth session
25-29 July 1994
Item 8 (b) of the provisional agenda

WORKING GROUP ON INDIGENOUS POPULATIONS

CONSIDERATION OF A PERMANENT FORUM FOR INDIGENOUS PEOPLE

Information received from Governments and
indigenous organizations

GE.94-13087 (E)

Introduction

1. The General Assembly in its resolution 48/163 of 21 December 1993 requested the Commission on Human Rights to give priority consideration to the establishment within the United Nations of a permanent forum for indigenous people. In its resolution 1994/28 of 4 March 1994, the Commission on Human Rights requested the Assistant Secretary-General for Human Rights to invite governments and indigenous organizations to express their views on this question, and to transmit to the Working Group on Indigenous Populations contributions received together with a technical note addressing institutional issues.

2. The technical note of the secretariat is contained in document E/CN.4/Sub.2/AC.4/1994/11. The present addendum contains the contributions received from governments and indigenous organizations as at 14 June 1994. Any other communications will be contained in further addenda to the secretariat note.

A. GOVERNMENTS

BENIN

[18 May 1994]
[Original: FRENCH]

In a letter dated 18 May 1994, the Republic of Benin expressed its support for the idea of a permanent forum for indigenous people in the United Nations system. It also expressed the wish that the forum be constituted on the basis of a broad number of indigenous organizations.

CANADA

[12 May 1994]
[Original: ENGLISH]

1. The Government of Canada looks forward with anticipation to the debate about a "permanent forum", which is placed on the agenda of the twelfth session of the Working Group on Indigenous Populations (WGIP). Representatives of indigenous people from around the world will then have the opportunity to set their objectives, to describe their needs and to discuss, in light of these, the appropriateness of existing human rights mechanisms of the United Nations, and other options. The Canadian Government hopes that, in order to assist the debate, the Centre for Human Rights will ensure the availability of United Nations experts in machinery of government who can contribute their knowledge of the organization, structure and operations of the United Nations system.

2. In the financial straits in which the United Nations finds itself, the need for new or additional bodies will require the most stringent examination. Canada shares with many other governments the view that every effort should be made to improve on the effectiveness and the efficiency of existing mechanisms of the United Nations before considering whether new and/or additional institutions ought to be created. With the imminent completion of its main task of drafting a declaration on the rights of indigenous people, the WGIP has the opportunity to concentrate on the task of reviewing developments to determine how States members of the Commission on Human Rights can best be advised regarding indigenous situations of international concern.

3. The WGIP process is unique in the United Nations system for the scope it offers to people to participate in public debate in their own right. Members of the WGIP have had access to this range of experience to develop, over the last 11 years, an expertise on indigenous matters that needs to be preserved as a basis for future activities. Even though its main task of drafting a declaration has been completed, there remains, in the opinion of some, other work which could find its way at a later date to an eventual working group of governments, to be established by the Commission, to consider the draft declaration. As well, the "developments" aspect of its mandate can be enhanced by the processes introduced during the International Year of the World's Indigenous People.

4. To mention but one process as an example, paragraph 2 of Commission resolution 1993/30 "recommends to all thematic rapporteurs, special representatives, independent experts and working groups to pay particular attention, within the framework of their mandates, to the situation of indigenous people". This recommendation was reiterated in General Assembly resolution 48/133, and again in Commission resolution 1993/29, to emphasize that the purpose of the original resolution was meant to be permanent and not just for the international year. We are not aware of any attention being given as yet to this procedure by the members of the Working Group or by the other participants in that process.

5. In sum, the mandate of the WGIP provides sufficient flexibility to undertake any of the above and perhaps more if indigenous people so require. Should this not prove to be the case after some years of experience, its mandate could again be reviewed to determine how it ought to be or whether only a new body will do.

FINLAND

[24 May 1994]
[Original: ENGLISH]

1. Considering that the General Assembly in its resolution 48/163 of 21 December 1993 proclaimed the International Decade of the World's Indigenous People, and the eventual adoption in 1995 of the Declaration on the Rights of Indigenous People, the Government of Finland welcomes the proposal of the Commission on Human Rights to establish a permanent forum in the United Nations for indigenous people. Finland has actively contributed to the discussions on this issue at the World Conference on Human Rights in Vienna last year.

2. The Government of Finland suggests that the permanent forum be given the mandate to monitor and follow up the implementation of the Declaration, to carry on the research work in various sectors initiated by the existing Working Group on Indigenous Populations, as well as to act as a coordinating body within the United Nations on all issues related to indigenous peoples.

3. The Government of Finland considers it important that full participation by representatives of indigenous peoples in the work of the permanent forum is ensured at all times.

NETHERLANDS

[27 May 1994]
[Original: ENGLISH]

The Government of the Kingdom of the Netherlands believes that a permanent forum in the United Nations for indigenous people would be an appropriate instrument for enhancing the access of indigenous people to national and international mechanisms for legal protection and to other relevant forums. The envisaged permanent forum could also act as a kind of umbrella organization which would prevent the unworkable situation of all the 5,000 or so representatives of indigenous peoples wishing to attend the

meetings of the Working Group on Indigenous Populations. Furthermore, there is a need for a coordinating body for the International Decade of the World's Indigenous People. This body could also be charged with the task of stimulating the elaboration and adoption of a Universal Declaration on the Rights of Indigenous People and of coordinating other United Nations activities for promoting the interests of indigenous people.

NORWAY

[30 May 1994]
[Original: ENGLISH]

1. Norway supports the idea of establishing a permanent forum for indigenous peoples in the United Nations. In this connection it should be emphasized that the question of establishment of such a permanent forum should be treated in close consultation with indigenous peoples and organizations.

2. It must also be borne in mind that such a forum should reflect indigenous peoples' interests in various programmes and activities of the United Nations system, in particular human rights questions and programmes related to environment and development. Furthermore, it is the view of the Norwegian Government that both Governments and indigenous peoples should be represented in a permanent forum for indigenous peoples.

B. INDIGENOUS ORGANIZATIONS

CENTRO DE CULTURAS INDIAS, CHIRAPAQ, PERU

[12 May 1994]
[Original: SPANISH]

In a letter dated 12 May 1994, Chirapaq expressed satisfaction at the proposal to establish a permanent forum and suggested that the United Nations prepare a preliminary document looking at the following points: frequency; membership, the role of indigenous representatives, the role of Government representatives, financing and the role of the forum.

INSTITUTO QECHWA JUJUY MANTA

[16 May 1994]
[Original: SPANISH]

After hearing suggestions from local residents participating in the Quechua-language workshops in the towns of north-west Argentina, San Salvador de Jujuy, Tilcara, Purmamarca, Maimará and Humahuaca, we can inform you that:

(a) It is a sound idea to establish a permanent forum for indigenous peoples, but it must be attended by authentic indigenous representatives and not by the inveterate travellers who trade in our culture;

(b) The representatives must be people with established residence in the indigenous communities - Indians from the canyons, the Puna, the foothills

or the coast - and not people from Buenos Aires who say they are working for the "Indians", although they have so far done nothing at all to help us;

(c) The permanent forum should have an accounts panel to deal with financial matters, for this is an area in which the Indians of this part of the Argentine nation experience difficulties;

(d) After due consideration, we could accept 4 November every year as the International Day of Indigenous People because of that date's association with the blow struck for freedom by our immortal predecessor, José Gabriel Condorcanqui Tupac Amaru II and the magnitude of its repercussions and its meaning for us Indians.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
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Working Group on Indigenous Populations
Twelfth session
25-29 July 1994
Item 8 of the provisional agenda

WORKING GROUP ON INDIGENOUS POPULATIONS

A permanent forum in the United Nations for indigenous people

Information received from Governments and indigenous organizations

Introduction

1. The General Assembly in its resolution 48/163 of 21 December 1993 requested the Commission on Human Rights to give priority consideration to the establishment of a permanent forum for indigenous people within the United Nations system. In its resolution 1994/28 of 4 March 1994, the Commission on Human Rights requested the Assistant Secretary-General for Human Rights to invite Governments and indigenous organizations to express their views on this question, and to transmit to the Working Group on Indigenous Populations contributions received, together with a technical note addressing institutional issues.

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GE.94-13191 (E)

MAURITIUS

[17 June 1994]
[Original: English]

The Government of Mauritius is agreeable to the establishment of a permanent forum in the United Nations for indigenous people with the proviso that it should not jeopardize the rights of immigrants but be used to promote harmony and peaceful coexistence.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

[16 June 1994]
[Original: English]

1. The United Kingdom recognizes the importance of the rights of indigenous people, which was reaffirmed by the proclamation by the General Assembly of the International Decade of the World's Indigenous People, beginning on 10 December 1994. However, the United Kingdom wonders whether there may be a risk of according a disproportionate priority to the subject within the United Nations human rights system. The creation of a decade, the existence and work of the Working Group on Indigenous Populations, and the mention of indigenous people in a wide range of recent resolutions passed by the United Nations General Assembly and the Commission on Human Rights are all important steps. Whether there is a further need for a permanent forum for indigenous people at this stage is a question requiring careful consideration.

2. The United Kingdom would wish to have a clearer idea of the role and objectives of such a "permanent forum". However it seems to us that, if "permanent fora" are to be created, other areas of concern in the human rights field have at least an equal claim. Many countries, including the United Kingdom, do not have an indigenous population to suffer from discrimination. There are many other forms of discrimination, such as that on racial or religious grounds, or against persons with disabilities, which are at least as severe as that against indigenous people. The United Kingdom would want to be sure that all the ways of addressing the problems faced by indigenous people at a national or regional level had been fully explored. It would also want the "forum" to have clear objectives, which could not be achieved by other means, for example, through continuing the work of the existing Working Group on Indigenous Populations. If a new forum were created, the United Kingdom would hope that it would exist instead of, rather than in parallel with, the existing Working Group, for reasons both of financial cost and of unnecessary duplication of work.

3. The United Kingdom notes that Commission on Human Rights resolution 1994/26 already requests the Assistant Secretary-General to establish a unit within the Centre for Human Rights to support its activities related to indigenous people and in particular to plan, coordinate and implement activities for the Decade of the World's Indigenous People. The United Kingdom considers that a decision on any more permanent forum to continue work after the Decade would be premature, and sees no need for the creation of a separate "forum" in parallel with this unit.

4. The United Kingdom is also concerned by the financial implications of the creation of a "forum", at a time when resources for human rights are already inadequate to allow the Centre for Human Rights to carry out effectively all its existing mandates. It would hope to have a clear idea of the cost implications of any such decision, which would of course depend on the forum's mandate and objectives.

ABORIGINAL AND TORRES STRAIT ISLANDER SOCIAL JUSTICE COMMISSIONER, AUSTRALIA

[24 June 1994]
[Original: English]

A. Future role of the Working Group

1. The completion by the Working Group on Indigenous Populations of the draft declaration on the rights of indigenous peoples does not mean that it no longer has a role to play in promoting the rights of indigenous peoples.

Advantages

The Working Group is the only forum in the United Nations solely dedicated to the consideration of indigenous peoples' issues;

It is highly accessible to direct participation by indigenous peoples, without regard to consultative status;

Its composition has allowed its members to remain independent of Governments;

It has gained a genuine understanding of the aspirations, as well as the diversity of indigenous peoples and become a repository of considerable expertise in relation to indigenous peoples' rights;

It may have a role to play in contributing to the passage of the draft declaration through the United Nations system, and contributing to the development of further international standards relating to the rights of indigenous peoples.

Disadvantages

The Working Group's status as a working group of the Sub-Commission on the Prevention of Discrimination and Protection of Minorities does not constitute adequate acknowledgement by the United Nations system of the unique historical experiences and distinct identities of indigenous peoples;

In relation to the review of developments, the reports of the Working Group have not sought to provide rigorous analysis of, or concrete conclusions and recommendations in respect of material received by the Working Group;

In relation to standard-setting, the Working Group is likely to be able to exert only limited influence on the text to be adopted by the General Assembly and its role in relation to the implementation of the Assembly's declaration remains to be determined;

It has no explicit fact-finding powers and no procedures for the handling of communications.

2. Two basic options have been proposed for the future role of the Working Group:

(i) That the United Nations strengthen it as a permanent institution to monitor and ensure the fulfilment of the rights of indigenous peoples (proposed in the B'okob Declaration of the First World Summit of Indigenous Peoples, 27 May 1993);

(ii) That it continue its efforts to promote the rights of indigenous peoples for the medium term and be replaced in time by a new permanent forum within the United Nations system.

3. It may be that, in addition to the creation of any new permanent forum for indigenous peoples, consideration should be given to the retention of the Working Group as a permanent forum in its own right.

4. If, for the medium term at least, the Working Group is to remain the only forum for indigenous peoples within the United Nations system, possibilities for maximizing the potential of its mandate must be explored.

Review of developments

5. The review of developments must contribute in a meaningful and measurable way to improving the situation of indigenous peoples. It is suggested that the Working Group:

(i) Convene its meetings and undertake consultations in regions in which indigenous peoples live;

(ii) Continue to receive information from indigenous peoples and Governments on progress at the national level towards:

(a) Giving effect to the provisions of the draft declaration;

(b) Negotiating arrangements to give effect to the right of indigenous peoples to self-determination;

(c) Establishing procedures for the resolution of disputes between indigenous peoples and States;

(iii) Work with indigenous peoples, specialized agencies and other United Nations bodies to:

(a) Establish a statistical database;

(b) Produce an annual thematic report on the world's indigenous peoples as a United Nations sales item;

(c) Elaborate a medium-term programme of activities, including seminars, conferences, research projects and studies, as well as financial and technical assistance to indigenous peoples and communities;

(iv) Propose guidelines for, coordinate and evaluate the activities of agencies and bodies within the United Nations system affecting indigenous peoples.

6. In order to enhance the review of developments, it is suggested that the Working Group call on the Economic and Social Council and the General Assembly to adopt resolutions:

(i) Enabling it to receive communications from indigenous individuals and peoples concerning violations of their rights;

(ii) Reviewing the mandate of the Voluntary Fund for Indigenous Populations to enable indigenous peoples to attend meetings of specialized agencies and bodies within the United Nations when matters of concern to indigenous peoples are being considered and to negotiate activities and projects of relevance to them.

Standard-setting

7. In order to continue to contribute effectively to the evolution of standards, it is suggested that the Working Group:

(i) Undertake regional consultations on the draft declaration to increase indigenous peoples' awareness of their rights and to ensure indigenous input in the process towards adoption;

(ii) Make its expertise available to its parent bodies in their consideration of the draft declaration;

(iii) Contribute to the elaboration of other draft international instruments and guidelines in areas of concern to indigenous peoples;

(iv) Promote and contribute to regional standard-setting activities.

8. It is suggested that the Working Group call on the Economic and Social Council and the General Assembly to adopt a resolution recognizing the competence of indigenous peoples and their organizations to participate in all specialized agencies and bodies within the United Nations system when matters of concern to them are under consideration and, in particular, to participate fully and effectively at all stages of consideration of the draft declaration.

B. A permanent forum for indigenous peoples

9. There is widespread consensus amongst indigenous peoples that an important goal of the International Decade must be the creation of a permanent space for indigenous peoples within the United Nations system. Whilst it is too soon to be discussing particular outcomes, consensus is emerging in relation to the following:

(i) The permanent forum must have a role in:

(a) Ensuring full participation of indigenous peoples in international decision-making affecting them;

(b) Supervising the implementation of indigenous peoples' rights, including those contained in the draft declaration;

(c) Enforcing treaties and other agreements with States;

(d) Resolving disputes and providing remedies for violations of indigenous peoples' rights;

(e) Coordinating activities across the United Nations system on the basis of full consultation and collaboration with indigenous peoples;

(ii) The permanent forum must have transparent, flexible and user-friendly procedures;

(iii) The composition of the forum must incorporate elements independent of States and/or the membership of indigenous peoples.

Proposed models

10. In their consideration of the proposed permanent forum, indigenous peoples have referred to various models. Whilst none can provide a blueprint for an indigenous peoples' forum, each incorporates a number of interesting features.

1. Expert committee

Composition

Independent experts, including indigenous experts, competent in the field of indigenous peoples' rights.

Status

Expert committee reporting to the General Assembly or the Economic and Social Council.

Functions

Examination of States' reports on progress towards the realization of indigenous peoples' rights;

Receipt of communications concerning specific violations of the rights of indigenous peoples and the provision of remedies;

Conciliation of more wide-ranging disputes between indigenous peoples and States;

Fact-finding visits to the territories of indigenous peoples;

Publication of an annual report containing decisions pursuant to the communications procedure, analysis of States' reports and information sought and received from other sources, and general comments and recommendations on progress towards the realization of indigenous peoples' rights.

2. Trusteeship Council model

11. The status of the Trusteeship Council as one of the five principal organs of the United Nations signifies the importance which was attached to the development of the peoples of trust territories towards self-government or independence. The establishment of an indigenous peoples' council as a new principal organ of the United Nations, or the reconstitution of the Trusteeship Council, would require amendment of the Charter of the United Nations pursuant to the procedure under Chapter XVIII.

Composition

Members of the United Nations and the representatives of indigenous peoples.

Status

Principal organ reporting to the General Assembly.

Functions

Dispatch of missions to the territories of indigenous peoples;

Dispatch of detailed questionnaires seeking information on political, economic, social and cultural developments affecting indigenous peoples;

Receipt of oral and written petitions from indigenous peoples on progress towards the realization of self-determination and on matters affecting the enjoyment of their rights;

Preparation of reports on the situation of indigenous peoples and submission thereof, together with recommendations, to the General Assembly.

3. Commission on Sustainable Development model

12. In 1992, at its forty-seventh session, the General Assembly adopted a resolution establishing a high-level Commission on Sustainable Development (CSD). The idea for that Commission arose out of the fourth session of the Preparatory Committee for the United Nations Conference on Environment and Development (UNCED). During UNCED, Governments agreed to establish the Commission as a functional commission of the Economic and Social Council to enhance cooperation for the integration of environment and development issues and to examine progress in the implementation of Agenda 21.

13. The establishment of a permanent forum for indigenous peoples as a functional commission of the Economic and Social Council would recognize that indigenous peoples' issues extend in many respects beyond the sectoral framework of human rights. An appropriate institutional response to the complexity of environment and development problems facing indigenous peoples could require the creation of an institutional space in which there is an integrated approach to the environmental and developmental and other economical and social aspects of indigenous peoples' rights, as well as a long-term, cross-sectoral approach to implementation.

Composition

A functional commission consisting either of Governments and indigenous peoples' representatives or of experts in the area of indigenous peoples' rights. Although the Commission on Sustainable Development model provides for expert participation in an advisory and not a decision-making capacity, there is no a priori reason preventing the creation of a functional commission consisting of experts. Following the League of Nations experience, it was originally envisaged that all functional commissions of the Economic and Social Council would be composed of experts;

A high-level advisory board consisting of eminent persons with relevant expertise to provide expert advice on the realization of indigenous peoples' rights and on other matters dealt with by the commission;

A secretariat unit.

Status

Functional commission of the Economic and Social Council.

Functions

Elaboration of a multi-year programme of work, supported by inter-sessional technical working groups and/or special rapporteurs;

Examination of progress in the realization of indigenous peoples' rights in accordance with guidelines on State reporting, requiring discussion of both sectoral and cross-sectoral issues and drawing on the assistance of a range of specialized agencies and United Nations bodies, as well as scientific and other non-governmental constituencies;

Promotion of scientific research, the development of composite indicators and the elaboration of protocols and guidelines;

Receipt of communications from indigenous individuals and peoples, with the ability to activate an emergency mechanism to take action to protect the rights of indigenous peoples in crisis situations.

Further matters for consideration

(a) United Nations office for indigenous peoples

14. For the medium term at least, the Working Group and the Centre for Human Rights have a central role to play in advancing the rights of indigenous peoples within the United Nation system. The Working Group is the focal point for consideration of future United Nations activities in relation to indigenous peoples and is an important vehicle for supervising the progress of the draft declaration. The Centre for Human Rights has onerous responsibilities in relation to the International Decade and in providing continuous liaison between indigenous peoples and United Nations programmes and agencies.

15. A United Nations office of indigenous peoples must be established to provide secretariat services in support of these activities. This office must be adequately resourced, it must be advised by indigenous experts and permanent indigenous staff must be appointed to it. Until the question of a permanent forum is resolved, the office of indigenous peoples may best be located in the Centre for Human Rights.

(b) United Nations high commissioner for indigenous peoples

16. As a medium-term measure, indigenous peoples might also consider the creation of the post of high commissioner for indigenous peoples. A United Nations official at the level of Under-Secretary-General, the high commissioner could seek to ensure that indigenous peoples' issues receive adequate policy prominence and resource endowment within the United Nations system. High-level indigenous experts could be responsible for the High Commissioner's activities in the different regions in which indigenous peoples live.

17. The High Commissioner's activities could include supervision of the United Nations office of indigenous peoples, provision of advisory services and technical and financial assistance to indigenous peoples, dialogue with Governments with a view to securing respect for indigenous peoples' rights and coordination of activities within the United Nations system in relation to indigenous peoples. At least pending the General Assembly's adoption of the

draft declaration and the establishment of permanent implementation machinery, the high commissioner could be given the capacity to act rapidly in response to emergencies.

18. It should be noted that the B'okob Declaration records the resolution of the First Summit of Indigenous Peoples to create a high commissioner for indigenous peoples.

(c) Specialized agencies and indigenous peoples

19. Within the framework of the International Decade, the specialized agencies and related United Nations bodies must develop comprehensive and adequately funded programmes to address the development needs of indigenous peoples. These programmes must emphasize the improvement of economic and social infrastructure in indigenous communities and the enhancement of self-reliance.

20. To ensure maximum control by indigenous peoples of the development process, advisory services and technical and other development assistance must be provided directly to indigenous communities and organizations. Agencies should appoint indigenous experts to determine priority areas for, and acceptable parameters of international assistance. To ensure a coordinated, system-wide response to the International Decade, an inter-agency committee on indigenous peoples should be established.